

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

CHAD ZUBRISKI and GEORGE  
DERATNAY, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiffs,

vs.

BIOAMBER INC., JEAN-FRANÇOIS HUC,  
and MARIO SAUCIER,

Defendants.

Case No. 2:17-cv-01531-ADS-AKT

CLASS ACTION

**JOINT MOTION TO MODIFY  
PRELIMINARY APPROVAL ORDER**

Lead Plaintiff Chad Zubriski and Named Plaintiff George Deratnay (“Plaintiffs”) and Defendants Jean-Francois Huc and Mario Saucier (the “Settling Defendants”) jointly request that the Court amend the Preliminary Approval Order (“Order”), Dkt. No. 57, to permit the Court to hold the Final Approval Hearing (“Hearing”) telephonically or by videoconference if it chooses to do so.

The Court holds wide discretion to issue orders to manage a proposed class action such as this one under Rule 23(d) of the Federal Rules of Civil Procedure. *See Weight Watchers of Philadelphia, Inc. v. Weight Watchers Int’l, Inc.*, 455 F.2d 770, 775 (2d Cir. 1972) (noting the “wide range of discretion in the management of class actions necessarily accorded the district judge by F.R.Civ.P. 23(d)”); *Schaffer v. Horizon Pharma Plc*, No. 16-CV-1763 (JMF), 2016 WL 3566238, at \*1 (S.D.N.Y. 2016) (Rule 23(d) grants “broad discretion to district courts to ‘make appropriate orders’ in order to facilitate management of class actions”).

The Preliminary Approval Order (“Order”), which the Court entered before the COVID-19 national emergency, among other things schedules a Final Approval Hearing (“Hearing”).

Dkt. No. 57, ¶ 6. The Order provides that the Hearing will take place “*before the Court* on May 20, 2020, at 9:00 a.m.” *Id.* (emphasis added). The Court-approved notice further instructs objectors that “*the Court will hold a Settlement Hearing* on \_\_\_\_, 2020, at \_\_:\_\_.m., *at the United States District Court for the Eastern District of New York, Courtroom 1020, 100 Federal Plaza, Central Islip, New York 11722.*” Dkt. No. 56-2, at page 9.

As the Court undoubtedly well knows, the COVID-19 pandemic has upended plans for in-person hearings throughout the nation. At this moment, the Parties do not know whether the Eastern District of New York will permit in-person hearings on civil matters on May 20. Even if it does permit such hearings, the state of the pandemic may be such that it may be unlawful or socially irresponsible for counsel and objectors to appear in person before the Court. Accordingly, the parties jointly respectfully request that the Court amend the Order to provide that the Court reserves the right to hold the Final Approval Hearing telephonically or by videoconference, as set out in the attached [Amended] Preliminary Approval Order (“Amended Order”).

Second, the Order provides that only persons who have actually filed objections may be heard at the Hearing. Dkt. No. 57, ¶ 24. Thus, the Court the Court should modify the Order to require Plaintiffs to provide notice to all persons who have filed objections of the Court’s election as well as instructions to attend. Thus modified, the Amended Order will ensure that the only people entitled to be heard at the Hearing receive notice of the Court’s election and are able to participate.

Conducting the Hearing by telephone or videoconference would still afford any objecting parties a fair opportunity to assert their objections or other challenges to the Settlement. Moreover, under the proposed modification the Court will have discretion to conduct the hearing

in person. These common-sense modifications will allow the Court to provide the constitutionally required opportunity to be heard while protecting the health of the public, court staff, and counsel for both parties.

Dated: April 2, 2020

Respectfully submitted,

**THE ROSEN LAW FIRM, P.A.**

/s/ Jonathan Horne

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2020, I electronically filed the foregoing document, which sent notification of such filing to all counsel of record.

/s/ Jonathan Horne